IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 3062/2007

SMT. SHAMIM BEGUM & ANR. Vs. SMT. AYASHA KHATUN & ANR.

DATE: 09.08.2007.

HON'BLE MR. JUSTICE K.S. RATHORE

Mr. Jai Prakash Gupta for the petitioners.
Mr. O.P. Mishra for
Mr. M.M. Ranjan for the respondents.

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In this writ petition the defendants-petitioners have challenged the impugned order dated 30.03.2007 passed by the Additional Civil Judge (Sr. Division) & Additional Chief Judicial Magistrate No.4, Jaipur City, Jaipur, whereby the application filed by the petitioners for appointment of commissioner has been rejected.

The case of the petitioners-defendants is that they are in possession of the disputed house and the plaintiff-respondent wants to forcibly dispossess them, therefore, to establish the fact that who is in actual possession of the disputed house, appointment of commissioner is necessary.

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On the other hand, learned counsel appearing for the plaintiff-respondent has vehemently opposed the contentions raised by the learned counsel for the defendants-petitioners and submits that she is in possession of the disputed house.

A bare perusal of the order impugned dated 30.03.2007 would reveal that while rejecting the application of the petitioners for appointment of commissioner, the Court below has observed that the parties are at liberty to adduce evidence and to submit documentary proof to establish their possession over the disputed house, but in any case the Court below has not thought it proper to appoint commissioner to create evidence.

Having heard rival submissions of the respective parties and after going through the impugned order dated 30.03.2007, I find no illegality or error apparent on the face of the record in rejecting the application of the defendants-petitioners for appointment of commissioner. However, the parties are given liberty to adduce evidence and produce documents to establish their possession. Even after adducing the evidence and producing documents if still dispute remains that who is in possession of the disputed house either the defendants-petitioners or plaintiff-

respondent, in such eventuality, the parties are given liberty to move fresh application for appointment of commissioner to verify the factum of possession over the disputed house.

With these observations, the writ petition stands disposed of.

(K.S. RATHORE),J.

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